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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,922	12/19/2001	Naoto Yasaka	1155-0236P	8872

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,922

Applicant(s)

YASAKA ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 9 is/are rejected.
- 7) ☒ Claim(s) 3 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on February 27, 2004 (After Final Amendment) and April 30, 2004 (Preliminary Amendment) has been entered.

Acknowledgement of Applicant's Amendments

2. Applicant's cancellation of claims 4-8 and 10-20 in the Preliminary Amendment filed April 30, 2004 (Amdt. E) has been acknowledged by Examiner.
3. Applicant's amendments in claims 1 and 3 in the After Final Amendment filed February 27, 2004 have been received and considered by Examiner.
4. Applicant's amendments in claims 1 and 2 in the Preliminary Amendment filed April 30, 2004 (Amdt. E) have been received and considered by Examiner.
5. Applicant's amendments in the specification in the After Final Amendment filed February 27, 2004 have been received and considered by Examiner.

WITHDRAWN OBJECTIONS

Specification

6. The objection to the specification that was repeated in paragraph 7 of Paper 15 has been withdrawn due to Applicant's amendments in the specification in the After Final Amdt.

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7. The objection to the specification made of record in paragraph 16 of Paper 15 has been withdrawn due to Applicant's amendments in the specification in the After Final Amdt.

Claim Objections

8. The objection to claim 2 that was repeated in paragraph 8 of Paper 15 has been withdrawn due to Applicant's amendments in claim 1 in the After Final Amdt.

9. The objection to claim 9 made of record in paragraph 17 of Paper 15 has been withdrawn due to Applicant's amendments in claim 1 in the After Final Amdt.

WITHDRAWN REJECTIONS

Claim Rejections - 35 USC § 112

10. The 35 U.S.C. 112, first paragraph rejection of claim 8 that was repeated in paragraph 11 of Paper 15 has been withdrawn due to Applicant's cancellation of claim 8 in Amdt. E.

11. The 35 U.S.C. 112, first paragraph rejection of claims 12, 17 and 20 made of record in paragraph 18 of Paper 15 has been withdrawn due to Applicant's cancellation of claims 12, 17 and 20 in Amdt. E.

12. The 35 U.S.C. 112, second paragraph rejection of claims 4-8 that was repeated in paragraph 12 of Paper 15 has been withdrawn due to Applicant's cancellation of claims 4-8 in Amdt. E.

13. The 35 U.S.C. 112, second paragraph rejection of claims 10-20 made of record in paragraph 19 of Paper 15 has been withdrawn due to Applicant's cancellation of claims 10-20 in Amdt. E.

Claim Rejections - 35 USC § 102

14. The 35 U.S.C. 102(b) rejection of claims 1 and 3 that was repeated in paragraph 13 of Paper 15 has been withdrawn due to Applicant's amendments in claims 1 and 3 in the After Final Amdt.

15. The 35 U.S.C. 102(b) rejection of claims 4 and 7 that was repeated in paragraph 13 of Paper 15 has been withdrawn due to Applicant's cancellation of claims 4 and 7 in Amdt. E.

Claim Rejections - 35 USC § 103

16. The 35 U.S.C. 103(a) rejections of claims 5, 6 and 8 that were repeated in paragraphs 14 and 15 of Paper 15 have been withdrawn due to Applicant's cancellation of claims 5, 6 and 8 in Amdt. E.

17. The 35 U.S.C. 103(a) rejections of claims 10-20 made of record in paragraphs 20 and 21 of Paper 15 have been withdrawn due to Applicant's cancellation of claims 10-20 in Amdt. E.

NEW OBJECTIONS

Claim Objections

18. Claims 3 and 9 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 3 and 9 do not further limit claim 1 in the case where component (B) alone is chosen from the set consisting of either (B) alone or both (B) and (C) as provided in claim 1.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

19. Claims 1, 3 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 1, the language of the claim in the fifth indented section of the claim recites two relative amount ranges for the (B) component-“10% by weight or more to less than 50% by weight” and “15 to 90% by weight”; which of these ranges does Applicant intend to claim for the range for component (B)? Claims 3 and 9 do not further limit claim 1 in the case where component (B) alone is chosen from the set consisting of either (B) alone or both (B) and (C) as provided in claim 1.

Claim Rejections - 35 USC § 102

20. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al.

In regard to claim 1, Yamamoto et al. teach a sealant for polypropylene (col.8, lines 54-63) comprising a high pressure processed low density polyethylene having a density of 915 to 930 kg/m³ (equivalently 0.915 to 0.93 g/cm³) and a melt flow rate of 0.1 to 20 g/10 min. (col. 2, lines 51-57) that corresponds to component (A) as claimed and a linear low density polyethylene (an ethylene/ α -olefin copolymer, col. 3, lines 6-7) having a density of 0.87 to 0.92 g/cm³ (a range that overlaps with Applicant's claimed range of “[0.86 g/cm³] to less than [0.89 g/cm³]", col. 3, lines 25-28), a melt flow rate of 2 to 30 g/10 min. (col. 3, lines 13-15) and a molecular weight distribution (Mw/Mn) of preferably not more than 3 (col. 4, lines 39-45) that is obtained from ethylene and an α -olefin having 3 to 18 carbon atoms (col. 2, lines 20-26 and 31-38) and that corresponds to component (B) as claimed. Yamamoto et al. teach that the high pressure

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processed low density polyethylene, component (A), is present in an amount of 1 to 50% by weight (col. 2, line 53) and that the linear low density polyethylene, component (B), is present in an amount of 50 to 99% by weight (col. 2, lines 34-35). Yamamoto et al. teach that the melt flow rate of the sealant composition is within a range of from 5 to 25 g/10 min. and that the melt tension of the sealant composition is not less than 1.0g, which is equivalent to 9.8mN (col. 8, lines 27-36). Furthermore, note that the recitation "consisting essentially of" does not mean "consisting of". *Ex parte Appeldorn & Gilkeson* (PO BdApp) 159 USPQ 791. In regard to the limitation that the low density polyethylene is "high pressure processed", the method of forming the low density polyethylene is not germane to the issue of patentability of the sealant itself. Therefore, this limitation has been given little patentable weight. The recitation "for an easily openable package" is an intended use recitation that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

Claim Rejections - 35 USC § 103

21. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. in view of Tsutsui et al.

Yamamoto et al. teach the sealant as discussed above. Yamamoto et al. teach that the copolymer (B) has a melt flow rate of 2 to 30 g/10min (col. 3, lines 13-18). Yamamoto et al. fail to teach that the copolymer (B) has a ratio of melt flow rates measured under 10 and 2.16 kg (MFR₁₀/MFR_{2.16}) of 5 to 20. Tsutsui et al., however disclose ethylene/ α -olefin copolymers having 3 to 20 carbon atoms having a density of 0.85-0.92 g/cm³, a Mw/Mn of 1.2-4 and an

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MFR₁₀/MFR₂ of 8-50 (col. 5, lines 29-41), specifications that overlap with the density and Mw/Mn ranges of the copolymer that corresponds to component (B) taught by Yamamoto et al. Therefore, one of ordinary skill in the art would have recognized that the copolymer that corresponds to component (B) taught by Yamamoto et al. having density and Mw/Mn ranges that overlap with the density and Mw/Mn ranges of the copolymer taught by Tsutsui et al. has an MFR₁₀/MFR₂ of 8-50, since an MFR₁₀/MFR₂ ratio of 8-50 is a typical ratio for ethylene/ α -olefin copolymers having 3 to 20 carbon atoms having a density of 0.85-0.92 g/cm³, a Mw/Mn of 1.2-4 as taught by Tsutsui et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the copolymer that corresponds to component (B) taught by Yamamoto et al. having density and Mw/Mn ranges that overlap with the density and Mw/Mn ranges of the copolymer taught by Tsutsui et al. has an MFR₁₀/MFR₂ of 8-50, since an MFR₁₀/MFR₂ ratio of 8-50 is a typical ratio for ethylene/ α -olefin copolymers having 3 to 20 carbon atoms having a density of 0.85-0.92 g/cm³, a Mw/Mn of 1.2-4 as taught by Tsutsui et al.

ANSWERS TO APPLICANT'S ARGUMENTS

22. Applicant's arguments presented in Amdt. E are moot due to the amendments made in the specification and claims made in the After Final Amdt. and Amdt. E. and due to the claim cancellations in Amdt. E.

Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-

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1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

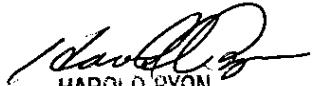
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

06/10/04

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 6/14/04